

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re JDS UNIPHASE CORPORATION
SECURITIES LITIGATION

No. C 02-1486 CW

ORDER REGARDING
CHALLENGED
STATEMENTS

_____ /

In their joint pre-trial conference statement, the parties indicate that they dispute whether five challenged statements are forward-looking and therefore potentially protected under the safe harbor in the Private Securities Litigation Reform Act (PSLRA) of 1995 or the judicially-created "bespeaks caution" doctrine. See 15 U.S.C. § 78u-5(c)(A)(I); In re Worlds of Wonder Sec. Litig., 35 F.3d 1407, 1413 (9th Cir. 1994).

The PSLRA defines the phrase "forward-looking statement" to include, among other things, a projection of revenues, income, earnings per share, capital expenditures, dividends, capital structure or other financial items. See 15 U.S.C. § 78u-5(i)(1)(A). A statement of the assumptions underlying such projections is also a forward-looking statement. See id. § 78u-5(i)(1)(D). Case law applying the bespeaks-caution doctrine defines "forward-looking statement" in a similar manner. See,

1 e.g., Worlds of Wonder, 35 F.3d at 1414 (doctrine applies to future
2 projections, estimates and forecasts).

3 The Court has reviewed the disputed statements and finds that
4 no genuine and disputed issues of material fact exist regarding
5 their classification as forward-looking or not. The Court hereby
6 rules that statements two and three are forward-looking and that
7 statements eleven, twenty-six and thirty-seven are not forward-
8 looking.¹

9 IT IS SO ORDERED.



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11 Dated: 10/10/07

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13 CLAUDIA WILKEN
14 United States District Judge
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26 ¹The Court refers to the alleged false or misleading
27 statements according to the statement numbers assigned by the
28 parties in exhibit A to the joint pre-trial conference statement.